

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

PFG ASPENWALK, LLC,

Debtor.

Chapter 11  
Case No. 10-47089-RJK

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**AFFIDAVIT OF THOMAS SALMEN IN SUPPORT OF THE  
DEBTOR'S MOTION FOR ORDER AUTHORIZING THE ENLARGEMENT OF THE  
DEBTOR'S DEADLINE TO OBTAIN CONFIRMATION OF A PLAN**

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STATE OF MINNESOTA                    )  
  ss.:  
COUNTY OF HENNEPIN                )

Thomas Salmen, being first duly sworn upon oath, states as follows:

1. I serve as Vice President of Finance for PFG AspenWalk, LLC (the "Debtor"), and I make this affidavit under penalty of perjury, in connection the Debtor's Motion for Order Authorizing the Enlargement of the Debtor's Deadline to Obtain Confirmation of a Plan (the "Motion"). All capitalized terms not defined herein shall have the meaning set forth in my Verified Statement in Support of the Motion filed on July 14, 2011 as Doc. No. 108.

2. The Debtor appeared at the continued Second Reading on July 25, 2011, and made a full presentation regarding the Project. As expected, the City Council requested additional information from the Debtor at the reserved hearing dates of August 8, 2011, September 12, 2011, and possibly August 22, 2011 if that hearing date becomes available. Thus, additional time is necessary.

3. Assuming Final PUD approval, the Debtor has been working with potential lenders in order to obtain financing sufficient to fund the Amended Plan.

4. On July 18, 2011, the Debtor received a “2nd Revised Letter of Interest” (“LOI”) from lender Kennedy Funding, Inc. (“Kennedy Funding”), which outlines the terms of a proposed commitment to provide funding in the amount of \$9 million. Attached as **Exhibit A** is a true and correct copy of the executed LOI.

5. In accordance with Paragraph 5 of the LOI, the Debtor delivered a check in the amount of \$10,000.00 to Kennedy Funding as a deposit for obtaining a loan commitment from Kennedy Funding.

6. According to the LOI, the closing of the proposed loan could occur “as quickly as seven (7) to ten (10) days after completion of [Kennedy Funding’s] due diligence . . . .”

7. On or about July 20, 2011, in accordance with Paragraph 5 of the LOI, the Debtor received a draft commitment (“Draft Commitment”) from Kennedy Funding related to the proposed financing identified in the LOI. Attached as **Exhibit B** is a true and correct copy of the Draft Commitment provided by Kennedy Funding.

8. Under the Draft Commitment, the closing for the \$9 million loan will take place “no later than August 17, 2011” as “time is of the essence.” This, however, contemplates that a final commitment is executed on July 27, 2011 – therefore, closing will occur three weeks after execution of a firm commitment.

9. The Debtor is making proposed revisions to the Draft Commitment, which it plans on delivering to Kennedy Funding in order to finalize the terms pending Final PUD approval.

10. The Debtor will execute the firm commitment and close the \$9 million loan approximately three weeks after Final PUD approval

11. With Final PUD approval, the value of the Project will increase substantially, thereby justifying the \$9 million loan.

12. An updated appraisal for the Project has not been obtained for the following reasons: (i) the appraisal for the Project is a part of Kennedy Funding's due diligence (as is typical in similar lending transactions), and it is unwilling to use an appraiser already used by the Debtor; (ii) it has not made fiscal sense for the Debtor to pay for an appraisal in advance when the Final PUD approval process was not moving along as expected; and (iii) Kennedy Funding has been (and still is) unwilling to perform an "as entitled" appraisal, despite numerous requests (most recently on July 22, 2011) by the Debtor to do so. Now that Final PUD approval is moving forward, working on the financing (which will require an appraisal) makes sense for both the Debtor and, more importantly, Kennedy Funding.

13. The Debtor will make every effort to receive Final PUD approval by August 24, 2011, thereby allowing the loan closing to occur by the Debtor's proposed extended confirmation deadline (September 14, 2011).

14. Assuming the \$9 million loan closes and the Amended Plan is thereby confirmed, all creditors, including Bank of America, will be paid in full, and the Debtor will be able to continue its efforts relating to the Project.

*(signature on following page)*

FURTHER AFFIANT SAYETH NOT.

PFG ASPENWALK, LLC

1m SL

Thomas Salmen  
Vice President of Finance

Subscribed and sworn to before me  
this 26 day of July, 2011.

Teresa A. Gaukel

Notary Public



# **EXHIBIT A**

TWO UNIVERSITY PLAZA  
SUITE 402  
HACKENSACK, NEW JERSEY 07601  
TEL: (201) 342-8500  
FAX: (201) 342-8373  
www.kennedyfunding.com

2<sup>nd</sup> REVISED  
LETTER OF INTEREST

July 18, 2011

Mr. Thomas R. Salmen  
PFG Aspen Walk, LLC  
3208 W. Lake Street #5  
Minneapolis, MN 55416

Via Email: [trsalmen@gmail.com](mailto:trsalmen@gmail.com)

Re: \$9,000,000 Financing Request

Dear Mr. Salmen:

Pursuant to our discussion regarding the above loan request, I am pleased to submit the following Letter of Interest. In no way should this be considered a firm loan commitment. Outlined below are the general terms and conditions required by Kennedy Funding, Inc. (KFI). These terms are only general guidelines, and only upon issuance of a firm commitment can exact terms of the loan commitment be determined.

This Letter of Interest shall expire one (1) week from issuance.

TERMS:

1. KFI would make a Loan up to Fifty Five Percent (55%) of the Market Value of the collateral used as security for the Loan. If Borrower were to dispute the value as determined by KFI, Borrower would have the right to have a third party appraiser hired, approved by KFI, and KFI would offer a Loan of Fifty Five Percent (55%) of the "as is" Market Value as determined by said appraiser or return the paid portion of the commitment fee. The Market Value would be based on a six (6) month sale to a cash buyer.
2. The Loan would be for three years interest only with no prepayment penalty.
3. The interest rate for the first year of the Loan shall be equal to the greater of (i) Twelve Percent (12%) or (ii) the Prime Rate plus Eight and Three Quarters Percent (8 3/4%).

The interest rate for the second year of the Loan shall be equal to the greater of (i) Fifteen Percent (15%) or (ii) the Prime Rate (as defined below) plus Eleven and Three Quarters Percent (11 3/4%).

The interest rate for the third year of the Loan shall be equal to the greater of (i) Eighteen Percent (18%) or (ii) the Prime Rate (as defined below) plus Fourteen and Three Quarters Percent (14 3/4%).

As used in herein, the term "Prime Rate" shall mean the rate of interest published in The Wall Street Journal from time to time as the "Prime Rate." If more than one "Prime Rate" is published in The Wall Street Journal for a day, the average of such "Prime Rates" shall be used, and such average shall be rounded up to the nearest one-eighth of one percent (0.125%). If The Wall Street Journal ceases to publish the "Prime Rate," the Agent shall select an equivalent publication that publishes such "Prime Rate," and if such "Prime Rates" are no

longer generally published or are limited, regulated or administered by a governmental or quasigovernmental body, then Agent shall elect a comparable interest rate index.

4. In lieu of equity, a FEE of Three Percent (3%) of the Loan amount would be paid to KFI from the loan proceeds at closing.
5. Upon receipt of a \$10,000 wire transfer or certified check, which would be applied toward the commitment fee, KFI would provide you with a draft of a commitment containing the terms and conditions of the loan commitment to be reviewed by you and your counsel. This amount is fully refundable for any reason if you do not execute a loan commitment with KFI and you request in writing within one (1) year of the date of this letter the return of the \$10,000.
6. Upon signing of the commitment, a commitment fee equal to Four Percent (4%) of the financing request is due; one half would be payable at the signing, and the remainder would be payable from the Loan proceeds at closing. This fee would be fully refundable if KFI does not perform its obligations under the loan commitment.
7. Notwithstanding anything herein to the contrary, the obligation of the Guarantor shall be released provided the Borrower and/or Guarantor, their agents, servants and/or employees:
  - (i) take no action to hinder, frustrate or delay the Lender in its efforts to enforce any right to collect the outstanding obligation from any of the property pledged as Collateral for this Loan; and
  - (ii) provide a deed in lieu of foreclosure at the request of Lender, with the real estate taxes paid current, no other liens on the property, and no environmental issues on the Collateral.
8. The loan must be closed pursuant to the terms and conditions of the KFI commitment.
9. Closing could occur in as quickly as seven (7) to ten (10) days after completion of our due diligence and receipt of title and all required documents. Our due diligence would commence within 24 hours after KFI receives an executed loan commitment from you.
10. Notwithstanding anything to the contrary contained herein, in no event shall the interest rate contracted for, charged, or received exceed the maximum rate allowed by law.

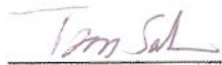
**THIS IS NOT A LOAN COMMITMENT.**

Very truly yours,

KENNEDY FUNDING, INC.

  
Mark Falzone  
Senior Loan Officer

I hereby acknowledge and agree to the above terms and authorize KFI to obtain credit information on myself.

  
Thomas R. Salmen  
PFG Aspen Walk, LLC

# **EXHIBIT B**



**DRAFT - DRAFT - DRAFT**

July 20, 2011

PFG Aspen Walk, LLC  
3208 W. Lake Street #5  
Minneapolis, MN 55416  
Attn: Mr. Thomas R. Salmen

**Re: Financing Request \$9,000,000**

Dear Mr. Salmen:

We are pleased to advise you of our commitment to provide financing. This commitment supersedes all previous communications and correspondence without limitation. The terms of this Loan Commitment are as follows:

**LENDER:** Kennedy Funding, Inc. (KFI), or any other Lender designated by KFI: KFI intends to bring participants into this transaction and reserves the right to assign or sell participations in all or part of the Loan (the "Loan") described hereunder.

**BORROWER:** PFG Aspen Walk, LLC FEIN# TO BE PROVIDED  
3208 W. Lake Street #5  
Minneapolis, MN 55416

**GUARANTORS:** Thomas R. Salmen SS# TO BE PROVIDED  
Full Address TO BE PROVIDED

Notwithstanding anything herein to the contrary, the obligation of the Guarantor shall be released provided the Borrower and/or Guarantor, their agents, servants and/or employees:

PFG Aspen Walk, LLC  
Loan Commitment  
July 20, 2011

(i) take no action to hinder, frustrate or delay the Lender in its efforts to enforce any right to collect the outstanding obligation from any of the property pledged as Collateral for this Loan; and

(ii) provide a deed in lieu of foreclosure at the request of Lender, with the real estate taxes paid current, no other liens on the property, and no environmental issues on the Collateral.

**COLLATERAL/**

**PROJECT:** A first lien on the Collateral as described in Schedule "C".

**MAXIMUM**

**LOAN:** A Loan of Nine Million Dollars (\$9,000,000) including the FEE, fees and costs in accordance with Schedule A attached.

**TERMS:** The term of the Loan shall be three (3) years from the date of closing. The closing shall take place not later than August 17, 2011, time of the essence. The time of the essence date was included at the insistence of the Borrower who has represented that it will be in a position to meet all requirements contained herein by said date.

Notwithstanding anything to the contrary above, in the event Borrower has accepted the Loan Offer and requires additional time to close, Borrower may extend the expiration date of this Commitment until September 16, 2011, time of the essence, upon written notice to KFI and payment of Ninety Thousand Dollars (\$90,000) no later than August 15, 2011, time of the essence.

PFG Aspen Walk, LLC  
Loan Commitment  
July 20, 2011

**INTEREST:**

**A.** The interest rate for the first year of the Loan shall be equal to the greater of (i) Twelve Percent (12%) or (ii) the Prime Rate plus Eight and Three Quarters Percent (8 3/4%).

**B.** The interest rate for the second year of the Loan shall be equal to the greater of (i) Fifteen Percent (15%) or (ii) the Prime Rate plus Eleven and Three Quarters Percent (11 3/4%).

**C.** The interest rate for the third year of the Loan shall be equal to the greater of (i) Eighteen Percent (18%) or (ii) the Prime Rate plus Fourteen and Three Quarters Percent (14 3/4%).

**D.** Monthly payments of interest only on the unpaid balance shall be due on the first day of each month for the prior month's interest until the maturity date, at which time the entire balance of principal and accrued and unpaid interest thereon shall be due and payable in full.

**E.** Monthly payments will be computed on a 30 day month and a 360 day year.

**F.** Interest from the date of closing to the end of the month in which the closing takes place shall be paid at the time of the closing.

**G.** As used in herein, the term "Prime Rate" shall mean the daily rate of interest published in The Wall Street Journal from time to time as the "Prime Rate." If more than one "Prime Rate" is published in The Wall Street Journal for a day, or if the daily "Prime Rate" fluctuates over any Thirty (30) day period, the average of such daily "Prime Rates" shall be used for any monthly interest calculation, and such average shall be rounded up to the nearest one-eighth of one percent (0.125%). If The Wall Street Journal ceases to publish the "Prime Rate," the Lender shall select an equivalent publication that publishes such "Prime Rate,"

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and if such "Prime Rates" are no longer generally published or are limited, regulated or administered by a governmental or quasigovernmental body, then Agent shall elect a comparable interest rate index.

**FEE:** Three Percent (3%) of the Loan amount.

**REPAYMENT:** The Loan may be prepaid in full or in part without penalty except there shall be no refund of the FEE, points, fees and the like. The unused portion of any Monthly Prepaid Interest is refundable.

**LEGAL MATTERS:** The interests of the Borrower and Lender are or may be different and may conflict, and the Lender's attorney represents only the Lender and not the Borrower and the Borrower is, therefore, advised to employ an attorney of the Borrower's choice licensed to practice in the State of New Jersey to represent the interests of the Borrower.

The Borrower shall be required to pay to the Lender's attorney, reasonable legal fees and expenses of Lender's attorney for services provided to Lender in connection with this transaction.

**DOCUMENTATION:** KFI's commitment to provide the Loan is subject to the negotiation, execution and delivery of definitive Loan and security agreements, mortgages or deeds of trust, notes, and other documentation and customary certificates and legal opinions (collectively, the "Loan Documents"), which in each case will be in form, substance and enforceability satisfactory to KFI in its sole discretion. The Loan Documents shall contain conditions precedent, representations and warranties, covenants, events of default and other terms and conditions consistent with the terms hereof as shall be satisfactory to KFI in its sole discretion and deemed appropriate by KFI for a transaction of the type contemplated herein.

PFG Aspen Walk, LLC  
Loan Commitment  
July 20, 2011

**ACCEPTANCE**

**OF COMMITMENT:** The commitment and all of its terms and conditions will become effective only upon delivery to this office of a signed copy of this commitment, duly accepted by the Borrower, accompanied with the commitment fee in the amount of Three Hundred Fifty Thousand Dollars (\$350,000) which is non-refundable and earned for, among other things, the commitment to provide funds.

Said fee is not refundable under any circumstances, except as agreed to herein.

Notwithstanding anything to the contrary contained in this commitment, the Borrower agrees that the basis for the Loan is the as is market value of the real estate Collateral in its present condition. Market value is defined as a six (6) month sale to a cash buyer. The Borrower understands that KFI will inspect the Collateral and will, in its sole discretion, determine the as is market value. Upon making a determination of value, KFI will deliver to Borrower a Loan Offer equal to Fifty Five Percent (55%) of the as is market value not to exceed the Financing Request. Failure by the Borrower to either accept or reject in writing the Loan Offer within three (3) days of receipt shall be deemed to be a rejection of the Loan Offer. Acceptance by Borrower of the Loan Offer shall constitute a waiver of the right to engage the services of a third party appraiser as described herein. Borrower understands that KFI cannot and will not lend more than Fifty Five Percent (55%) of the as is market value of the real estate Collateral. If KFI's determination of the value of the property is disputed by Borrower, Borrower may reject the Loan Offer and elect to engage the services of a third party appraiser. If Borrower makes this election, the Borrower and KFI shall mutually agree on a third party MAI appraiser, with proper credentials, contracted by KFI, and any fees for said appraiser to be reimbursed to KFI by Borrower prior to the appraisal being performed. Upon receipt of the determination of value by the third party appraiser, KFI will, at its option, either offer a Loan (not to exceed in

PFG Aspen Walk, LLC  
Loan Commitment  
July 20, 2011

any event the Financing Request) of Fifty Five Percent (55%) of the as is market value of the real estate Collateral as determined by said appraiser or return the paid portion of the commitment fee.

If the Collateral is determined to have a value which would require KFI to make a Loan of One Million Dollars (\$1,000,000) or less, KFI will not be obligated to make the Loan unless the Borrower provides additional Collateral acceptable to KFI in its sole discretion to increase the amount of this loan to at least One Million Dollars (\$1,000,000). If the Loan amount is not increased, the commitment fee will be earned by KFI.

This letter will become a commitment once signed by all parties and returned with the Three Hundred Fifty Thousand Dollars (\$350,000) as outlined above. This commitment will expire August 17, 2011, time of the essence. KFI shall have no obligation with respect to the Loan unless and until this commitment letter is fully executed and received by KFI along with the commitment fee.

**RETURN OF  
COMMITMENT FEE:**

If KFI is unable to perform its obligations under the terms of this commitment for whatever reason, KFI shall only be obligated to refund the paid portion of the commitment fee. SAID REFUND SHALL BE THE TOTAL EXTENT OF ANY LIABILITY OR OBLIGATION ON THE PART OF KFI UNDER ANY CIRCUMSTANCE. There will be no refund if Borrower does not accept the loan offer(s) made by KFI pursuant to this commitment or Borrower has not complied with all the conditions of this commitment.

**OTHER:**

a) KFI hereby acknowledges receipt of Ten Thousand Dollars (\$10,000) which is non-refundable, for the preparation of this commitment.

PFG Aspen Walk, LLC  
Loan Commitment  
July 20, 2011

b) Borrower agrees upon acceptance of the Loan Offer to forward an additional Ten Thousand Dollars (\$10,000) to KFI on account of preliminary due diligence including, without limitation, environmental, survey and title review by KFI and third parties. The acceptance of any such amount by KFI or any third party shall not be construed as evidence that the Borrower has fulfilled all of its obligations under the terms of this commitment. This Ten Thousand Dollars (\$10,000) will be applied toward third party fees due in connection with the Loan at the Loan closing.

**EXPENSES:**

Borrower agrees that the Loan shall be without cost to KFI. Borrower assumes liability for and will pay all costs and expenses required to satisfy the conditions hereof and the making of the Loan. Such costs and expenses shall be paid at or prior to the Loan closing, or upon demand if the Loan does not close or if this commitment is terminated. Such obligation shall survive termination. Borrower will also provide airline tickets and hotel accommodations if necessary.

**RELEASES:**

During the term of the Loan, provided all payments of principal and interest on the Loan shall be current on the date of the sale and at the time of the sale and there are no uncured defaults or events of uncured defaults under the Loan Documents, Borrower may sell for cash individual parcels of the Collateral. KFI agrees to release such sold parcels provided that KFI receives the Release Price for such parcel which will be applied to the outstanding balance. The Release price will be the greater of:

- (i) 80% of the net sale price of the parcel taking into account reasonable and customary closing adjustments and customary sales commissions;
- (ii) 75% of the gross sale price of the parcel;

PFG Aspen Walk, LLC  
Loan Commitment  
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(iii) the minimum release amount as agreed to on a schedule to be approved  
by KFI prior to closing.

(The greater of the above three amounts being the "Release Price".)

**GOVERNING  
LAW, ETC.**

This commitment may be executed in counterparts which, taken together, shall constitute one original. This commitment is for the benefit of the Borrower only and may not be assigned except upon the prior written consent of KFI, which consent may be withheld for any reason or no reason. No party other than Borrower or a permitted assignee may rely upon the terms and conditions of this commitment. This commitment will be governed by and construed in accordance with the laws of the State of New Jersey without regard to the principles of conflicts of laws thereof.

**WAIVER:**

No failure on the part of KFI to exercise and no delay in exercising any rights under the Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise by KFI of any right under the Loan Documents preclude any further exercise thereof, or the exercise of any other right. Each and every right or remedy granted under the Loan Documents or under any document delivered thereunder or in connection therewith or allowed to KFI in law or equity shall be deemed cumulative and may be exercised from time to time.

This Commitment is executed by an individual strictly in his capacity as a representative of the Lender. By the acceptance of this Commitment, Borrower agrees that no representative, member, partner, shareholder, employee or agent of the Lender shall be personally liable for the payment of any claim or the performance of any obligations hereunder.



PFG Aspen Walk, LLC  
Loan Commitment  
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**LIMITATION**

**OF DAMAGES: KFI SHALL HAVE NO LIABILITY TO BORROWER, OR ANY OTHER ENTITY OR PERSON, UNDER ANY THEORY OF LAW OR EQUITY FOR ANY AMOUNT IN EXCESS OF THE PAID PORTION OF THE COMMITMENT FEE. BORROWER ACKNOWLEDGES THAT THIS LIMITATION OF DAMAGES CLAUSE IS REASONABLE. BORROWER AGREES NOT TO PURSUE ANY CLAIM IN EXCESS OF THE ABOVE SUM.**

**WAIVER OF TRIAL**

**BY JURY: BORROWER AND LENDER EACH HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, COUNTERCLAIM, OR CROSS-CLAIM ARISING IN CONNECTION WITH, OUT OF, OR OTHERWISE RELATING TO THIS COMMITMENT, THE OTHER LOAN DOCUMENTS, THE OBLIGATION, THE COLLATERAL, OR ANY RELATED TRANSACTION.**

**MISCELLANEOUS: BORROWER UNDERSTANDS THAT KFI CANNOT AND WOULD NOT ENTER INTO THIS COMMITMENT WITHOUT BORROWER'S AGREEMENT TO THE LIMITATION OF DAMAGES, CHOICE OF FORUM AND WAIVER OF TRIAL BY JURY CLAUSES CONTAINED HEREIN.**

**BORROWER AND GUARANTOR(S) UNDERSTAND THAT THEY ARE OBLIGATED TO DISCLOSE TO LENDER THE NAME AND ADDRESS OF ANY THIRD PARTY FEE PROVIDER(S). IN THE EVENT THERE IS A THIRD PARTY FEE PROVIDER, THE THIRD PARTY FEE PROVIDER SHALL BE REQUIRED TO SIGN THIS LOAN COMMITMENT. IN THE EVENT THAT BORROWER FAILS TO**

PFG Aspen Walk, LLC  
Loan Commitment  
July 20, 2011

MAKE SUCH DISCLOSURE, BORROWER AND GUARANTOR(S)  
AGREE TO INDEMNIFY AND HOLD HARMLESS LENDER AGAINST  
ANY AND ALL CLAIMS ASSERTED BY SUCH UNDISCLOSED PARTY  
AS WELL AS ANY ATTORNEYS' FEES INCURRED IN DEFENDING  
AGAINST SAME.

**COMMITMENT FEE**

**MODIFICATION:** Notwithstanding the above requirement to pay Three Hundred Fifty  
Thousand Dollars (\$350,000) at the signing of the commitment, as  
consideration for the parties unconditionally and irrevocably waiving all  
right to trial by jury and the parties agreeing to the Choice of Forum and  
Limitation of Damages clauses, KFI will accept payment of the  
Three Hundred Fifty Thousand Dollars (\$350,000) in the following manner:

- a) One Hundred Eighty Thousand Dollars (\$180,000) to be paid at the  
time this commitment is signed, prior to our due diligence, which  
signing will be no later than July 27, 2011, time of the essence;
- b) One Hundred Seventy Thousand Dollars (\$170,000) to be paid at the  
closing or upon Borrower electing not to proceed to a Loan closing.  
In addition, any default by the Borrower under this commitment, or  
other failure of Borrower to comply with this commitment, or  
misrepresentation by Borrower of any fact or state of facts to KFI  
either in connection with this commitment or otherwise, or any  
material adverse change of any type shall not relieve Borrower of its  
obligation to pay such amount to KFI.

Borrower acknowledges that Schedule "B" annexed hereto represents conditions of the Loan commitment  
required by Lender and that this document would not be executed by Lender without Borrower's  
agreement thereto. Borrower further acknowledges that each and every delivery required under this Loan

PFG Aspen Walk, LLC  
Loan Commitment  
July 20, 2011

Commitment (including those required under Schedule "B") must be made directly to KFI or its designated legal counsel. Any deliveries made to any other person or entity (including without limitation any appraiser or broker involved with the proposed loan transaction) shall not be deemed a delivery to KFI as required hereunder.

This document is an arms length and negotiated agreement. It shall be construed without any regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted.

Sincerely,

KENNEDY FUNDING, INC.

BY: \_\_\_\_\_  
Gregg Wolfer, Co-Chief Executive Officer

DATE: \_\_\_\_\_

COMMITMENT ACCEPTED

PFG ASPEN WALK, LLC

BY: \_\_\_\_\_  
Thomas R. Salmen, Managing Member

\_\_\_\_\_

Thomas R. Salmen, Individually and as Guarantor

DATE: \_\_\_\_\_

**DRAFT - DRAFT - DRAFT**

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PFG Aspen Walk, LLC  
Loan Commitment  
July 20, 2011

327

328

**SCHEDULE "A"**

329

330

331

332 LOAN AMOUNT

\$9,000,000

333

334

335

PROPOSED LOAN AND USE OF PROCEEDS

336

337 FEE (3% of the Loan Amount)

\$270,000

338 (Non-Refundable)

339

340

341 MONTHLY PREPAID INTEREST

UNKNOWN

342 (Refundable if unused)

343

344

345 CLOSING COSTS

UNKNOWN

346

347

348 BROKERAGE COMMISSION

UNKNOWN

349

350

351 BALANCE OF COMMITMENT FEE

\$170,000

PFG Aspen Walk, LLC  
Loan Commitment  
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**SCHEDULE "B"**

These General Conditions are part of the attached commitment and deemed a part hereof as if set forth therein.

1. **Survey:** The Borrower shall provide a survey certified to the Lender and the title company satisfactory to the title company on each piece of Collateral prepared by a surveyor licensed by the State showing the project to be free of encroachments, overlapped and other survey defects, delineating all wetlands on the property (if any), all in accordance with the Lender's survey requirements.
2. **Insurance:** The Borrower must furnish liability and hazard insurance in a sum not less than the replacement value of the Collateral but in no event less than the amount of the Loan insured by a company or companies satisfactory to Lender.
3. **Title:** The Lender shall receive a first lien on the Collateral acceptable to its Counsel and Borrower shall provide a paid title insurance policy in an amount no less than the amount of the Loan insured by a title company or companies satisfactory to Lender.
4. **Flood Insurance:** If any material part of any parcel of the Collateral is located in an area designated as being subject to a special flood hazard, Borrower shall obtain all available flood insurance. If insurance is not available, and if such unavailability legally precludes the mortgage from covering such affected parcel, such parcel shall be removed from the Collateral and all Loan amounts recalculated.
5. **Easements:** All necessary easements for utilities, public road access, parking or otherwise shall be provided for prior to closing.

PFG Aspen Walk, LLC  
Loan Commitment  
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6. **Additional Collateral:** As additional Collateral Borrower agrees to allow Lender to lien all inventory, machinery, equipment, accounts receivable and all other assets owned by Borrower.
7. **Approval of Lender's Counsel:** The title in the project and the form and substance of each and every document evidencing the Loan and the security thereof or incident thereto, must be satisfactory to and approved by Counsel to the Lender in its sole discretion.
8. **Approval of Borrower's Counsel, Etc.:** Borrower acknowledges that it has consulted with counsel of its choice and with such other experts and advisors as it deemed necessary in connection with the negotiation, execution, and delivery of this Commitment and Borrower acknowledges that it will consult with counsel of its choice and with such other experts and advisors as it deems necessary in connection with the negotiation, execution and delivery of the other Loan Documents. This Commitment and the other Loan Documents shall be construed without regard to any presumption or rule requiring that they be construed against the party causing them, or any part of them, to be drafted.
9. **Representations and Warranties of Borrower and Guarantor:** Customary for transactions of this type, including, but not limited to, the following:
- (a) Neither the Loan Documents nor the performance by Borrower of its obligations thereunder violate any provisions of law, of Borrower's partnership agreement, corporate by-laws, or of any agreement which is binding upon Borrower or the Guarantors. No action or permission by any governmental commission, bureau or agency is required in connection with the execution or the performance of the Loan Documents by Borrower, and Borrower is not subject to filing, reporting or like requirements of any governmental commission, bureau or agency charged with control or supervision of environmental concern.

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- (b) All financial information furnished or disclosed to KFI by Borrower and Guarantors touching upon the financial condition of any of them is true and correct as of the date furnished, and there has been no omission of any material fact relating thereto, and there has been no material adverse change in the financial condition, operations or business of any of them since the date of such financial information. Borrower and Guarantor(s) authorize KFI to obtain any credit information which KFI deems appropriate or necessary regarding the Borrower and/or Guarantor(s).
- (c) Borrower or Guarantors is not in default in the performance, observance or fulfillment of any of the obligations or conditions contained in any agreement or instrument to which it is a party, or with respect to any evidence of indebtedness or obligation for borrowed money which affects in any way the Collateral, nor does any condition exist which, upon the lapse of time or giving of notice, or both, would constitute an event of default under, or grounds for termination of, any such agreement or instrument.
- (d) No actions, suits or proceedings at law or in equity are pending or, to the best of Borrower's or Guarantor's knowledge, threatened, in any court or before any federal, state, municipal or governmental department, commission, board, bureau, agency or instrumentality against or affecting Borrower, the Guarantors, or any of its properties or rights which, if adversely determined would materially adversely affect the financial condition of Borrower or Guarantors or materially impair the right of either to carry on its business substantially as now conducted, nor is either in default with respect to any judgement, writ, injunction, decree, rule or regulation of any court or federal, state, municipal or governmental department, commission, board, bureau, agency or instrumentality.
- (e) At Lender's option, Borrower will establish and maintain reserves for ongoing taxes and insurance premiums, prepaid interest and replacement reserves in

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amounts acceptable to Lender. The tax and insurance reserve will be funded up front and from monthly cash flow and will be 1/12<sup>th</sup> of the annual amount payable. All funds held in the reserve accounts will be held for the benefit of the Borrower, except for the tax and insurance reserve (which shall be for the benefit of the Lender).

10. **Miscellaneous:** Prior to the closing of the Loan and disbursement of funds, in each instance the Borrower must comply with the following:

(a) The Borrower is to produce such evidence as Lender may require to demonstrate current full compliance with all applicable zoning, health, environmental and safety laws, ordinances and regulations (including without limit approval of local, private or public sewage or water utility). The Borrower shall certify or supply other satisfactory evidence to the Lender at the time of the closing that there is no action or proceeding pending before any Court or Administrative Agency with respect to the validity of any laws, ordinances or regulations, and any certifications or permits issued thereunder, pertaining to the premises. The Borrower shall certify or supply other evidence satisfactory to the Lender that the Borrower is not a party to any existing or pending or threatened litigation, unless specifically noted herein.

(b) All appropriate approvals necessary for the current use and the completed project contemplated by this commitment (if applicable) must be provided and must meet all applicable requirements of all governmental authorities having jurisdiction, including, but not limited to subdivision and site plan approvals, the Department of Environmental Protection and its several subdepartments as they pertain to potable water supply, sewage discharge and sewage connection, use of septic tanks or alternatives. The Lender shall require prior to closing, evidence satisfactory to it and its Counsel of full compliance with all Environmental



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Clean-Up Responsibility Acts and that no action is pending or liens imposed under any Spill Compensation and/or Control Acts.

(c) During the term of the Loan, there shall be no additional financing nor any transfer of title, not contemplated in the Loan Documents without the prior written approval of the Lender.

(d) Execution by the Borrower of such Loan Documents including, but not limited to, a mortgage and mortgage note, satisfactory in form and substance to the Lender and its Counsel, including a prohibition against the transfer of title of any of the Collateral not contemplated in the Loan Documents, and if the Borrower is a corporation or partnership, a change in the management or controlling interest in the Borrower. Borrower may prepay the Lender at any time, in whole or in part, without penalty except for all of the FEE which is considered earned at the time of closing.

(e) This commitment is subject to the accuracy of all information, representations, exhibits and other materials submitted with or in support of the Loan request and there must be no adverse change in the set of facts prior to the disbursements of funds or during the term of the Loan. This commitment may be terminated by KFI and the Commitment Fee retained and earned by KFI in the event of the following:

(i) If the Borrower shall fail to comply with any of the terms or conditions hereof.

(ii) In the event of a sale, conveyance or other disposition of any of the Collateral.

(iii) In the event of a materially adverse change in the financial condition of the Borrower or any Guarantor.

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(iv) Any fraudulent material misrepresentation or any omission or concealment by the Borrower or any Guarantor of any material fact.

(v) For any good faith reason.

(f) In the event of any default during the term of this Commitment, KFI may, at its option, require immediate payment of the balance of the Commitment Fee and KFI may terminate the Commitment and retain the paid portion of the Commitment Fee.

(g) The Borrower has the obligation to disclose all material facts, past and present, related to the Borrower, Guarantors, the Collateral, the transaction, etc.

(h) The Borrower specifically acknowledges and agrees that KFI and/or Lender rely on counsel opinion letters relating to, among other items, usury. This commitment is subject to the express condition that at no time will the Borrower be obligated or required to pay interest at a rate which could subject KFI and/or Lender to either civil or criminal liability as a result of being in excess of the maximum rate which the Borrower is permitted by law to contract or agree to pay. If, by the terms of this commitment or the Loan Documents the Borrower is at any time required or obligated to pay interest at a rate in excess of such maximum rate, the rate of interest shall be deemed to be immediately reduced to such maximum rate and the portion, if any, of all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance.

(i) At Lender's option at closing, the owner of the collateral and the Borrower shall be a newly formed single-purpose "bankruptcy remote" limited liability company or limited partnership acceptable to Lender. The Borrower's organizational documents shall contain provisions satisfactory to Lender. These provisions may not be amended in any material respect during the term of the Loan without

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Lender's consent. The sole business activity of the Borrower shall be the ownership and operation of the Mortgage Property. The Borrower shall have no debt other than the Loan at closing. The Borrower shall be prohibited from incurring additional debt other than the Loan throughout the Loan term, including without limitation, partnership debt. Any advances made to Borrower from any partner, member of Borrower or shareholder shall be in the form of equity not debt.

11. **Validity of Loan:** The Loan and the closing thereof shall in all respects be legal and not violate any applicable law or other requirements of any governmental authority. The Borrower will submit to the Lender at closing a current written opinion by the Borrower's legal Counsel, satisfactory to Lender, to the effect, among other things, that all Loan Documents are valid and binding upon the Borrower and any other mortgagor and are enforceable in accordance with their terms and are legal and do not violate any local, state or federal laws including, but not limited to, all usury laws. Once the Loan is closed and funded by the Lender, the Loan shall be governed and construed pursuant to the laws of the State of New Jersey. Borrower understands that KFI has entered into this Commitment expecting to receive a return on the Loan as set forth in this Loan Commitment. In the event that the jurisdiction in which the Collateral is located and/or from which payment is made requires the payment of a tax, assessment, or other charges in connection with the Loan by Lender, Borrower will be responsible for the payment of such tax, assessment or charge and shall reimburse Lender for any payment required to be made by the Lender.

12. **Governing Law:** This Commitment and the other Loan Documents (except the Mortgage which shall be construed in accordance with the law of the situs of the realty), shall be governed by and construed in accordance with the internal substantive laws of the State of New Jersey, without regard to the choice of law principles of such state.

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13. **Usury:** It is expressly understood and acknowledged by the Borrower that KFI may not be familiar with the usury statutes in the Collateral's jurisdiction and relies on counsel opinions delivered at closing. This commitment is subject to the express condition that at no time shall the Borrower be obligated or required to pay interest at a rate which could subject KFI or the Co-Lenders to either civil or criminal liability as a result of being in excess of the maximum rate which the Borrower is permitted by law to contract or agree to pay. If by the terms of this commitment or the note the Borrower is at any time required or obligated to pay interest at a rate in excess of such maximum rate, the rate of interest hereunder and/or under the note shall be deemed to be immediately reduced to such maximum rate and interest payable shall be computed at such maximum rate and the portion of all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of principal balance or, if the Loan has not closed shall be void, and if KFI deems it a hardship to close the Loan under the usury statutes, all fees paid to KFI shall be refunded and this commitment shall be null and void.

14. **Choice of Forum:** Borrower and Guarantor(s) consent to the jurisdiction of any state or federal court sitting in the State of New Jersey for adjudication of any dispute between the Borrower and Guarantor(s), their agents, servants and/or employees and KFI under any theory of law in connection with, out of, or otherwise relating to this Commitment and any related transactions and that venue shall be proper in any such court to the exclusion of the courts in any other state or country. The Borrower further agrees that such designated forum is proper and convenient. By executing this commitment, Borrower and Guarantor(s) authorize KFI to obtain credit information on Borrower and Guarantor.

15. **WAIVER OF TRIAL BY JURY:** Borrower and Lender each hereby unconditionally and irrevocably waive any and all right to trial by jury in any suit, counterclaim, or cross-claim arising in connection with, out of, or otherwise relating

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to this Commitment, the other Loan Documents, the Obligation, the Collateral, or any related transaction.

16. **No Oral Modifications:** Notwithstanding any course of dealing between the parties, no amendment, modification, rescission, waiver, or release of any provision of this Commitment shall be effective unless the same shall be in writing and signed by the Borrower and Lender.

17. **Complete Agreement:** This Commitment, together with the other Loan Documents, constitutes the entire agreement and understanding among the parties relating to the subject matter of this Mortgage Loan, and supersedes all prior proposals, negotiations, agreements, and understanding relating to such subject matter. In entering into this agreement, Borrower acknowledges that it is relying on no statement, representation or agent of the Lender, except for the agreements of Lender set forth herein.

18. **Survival of Commitment:** Borrower and Lender hereby acknowledge and agree that this commitment shall not survive closing. Furthermore, notwithstanding the provisions of paragraph 16 above, the parties specifically acknowledge and agree that the terms and conditions of this Loan may be modified by mutual agreement at any time up to and including the date of closing and that any such modifications shall be incorporated directly into the Loan Documents without the need to amend this Commitment.

19. **Execution.** This Loan Commitment may be executed in any number of counterparts, each in which shall be considered an original. Delivery of an executed copy by one party to the other, via facsimile, shall constitute a valid delivery.

The undersigned does hereby accept this Commitment and does hereby agree to keep and perform each and every item and condition herein before set forth and do acknowledge that the performance of such terms and conditions are obligations of the undersigned. The undersigned acknowledges and agrees that Lender requires satisfaction of the conditions herein (and in the Loan Documents) at least 48 hours prior

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618 to the closing and funding of the Loan. The attorney for the Borrower has reviewed this commitment and  
619 has explained all of its terms and ramifications to the Borrower and the Guarantor.

620

621 **ACCEPTED:**

622 PFG ASPEN WALK, LLC

623

624 BY: \_\_\_\_\_

625 Thomas R. Salmen, Managing Member

626 \_\_\_\_\_

627 Thomas R. Salmen, Individually and as Guarantor

628

629 DATE: \_\_\_\_\_

**DRAFT - DRAFT - DRAFT**

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PFG Aspen Walk, LLC  
Loan Commitment  
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**SCHEDULE "C"**

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(COLLATERAL / PROJECT DESCRIPTION)

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TO BE PROVIDED BY BORROWER

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635

636

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

PFG ASPENWALK, LLC,

Debtor.

Chapter 11

Case No. 10-47089 (RJK)

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**CERTIFICATE OF SERVICE**

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I, Aong Moua, declare, under penalty of perjury, that on July 26, 2011, I filed:

**AFFIDAVIT OF THOMAS SALMEN IN SUPPORT OF THE  
DEBTOR'S MOTION FOR ORDER AUTHORIZING THE ENLARGEMENT OF THE  
DEBTOR'S DEADLINE TO OBTAIN CONFIRMATION OF A PLAN**

with the Clerk of Bankruptcy Court through ECF, and that ECF will send an e-notice of electronic filing to the following:

**William Fisher;** william.fisher@gpmlaw.com  
**Timothy A. Fusco;** fusco@millercanfield.com  
**Marc N Swanson;** swansonm@millercanfield.com  
**Michael Fadlovich;** michael.fadlovich@usdoj.gov  
**Mark J. Kalla;** mark.kalla@btlaw.com  
**US Trustee;** ustpregion12.mn.ecf@usdoj.gov

I further certify that I caused a copy of the foregoing documents and the notice of electronic filing to be mailed by first class mail, postage paid, to the following parties:

AMANDA SCHMITT  
404 PARK AVENUE #1  
ASPEN CO 81611

ASPEN CUSTOM GLASS  
601 RIO GRANDE PLACE, STE 119A  
ASPEN CO 81611

ASPEN PITKIN HOUSING AUTHORITY  
ATTN: TOM MCCABE, EXEC. DIR.  
530 EAST MAIN STREET  
ASPEN CO 81611

BANK OF AMERICA, N.A.  
ATTN: RICHARD L. CARTER  
2990 LAVA RIDGE CT, SUITE 120  
ROSEVILLE CA 95661



BRITTANY BUFFALINO  
404 PARK AVENUE #1  
ASPEN CO 81611

CAMERON LEONARD  
404 PARK AVENUE #9  
ASPEN CO 81611

CITY OF ASPEN  
130 SOUTH GALENA STREET  
ASPEN CO 81611

CLAYTON DAY  
404 PARK AVENUE #2  
ASPEN CO 81611

HOLY CROSS ENERGY  
P.O. BOX 2150  
3799 HWY 82  
GLENWOOD SPRINGS CO 81602

INTEGRITY PLUMBING AND HEATING  
218 CODY LANE  
BASALT CO 81621

JOAQUINN TARANGO  
404 PARK AVENUE #5  
ASPEN CO 81611

JONATHAN RIVERS  
404 PARK AVENUE #3  
ASPEN CO 81611

JULIE COOK  
404 PARK AVENUE #0  
ASPEN CO 81611

LAURENCE MONJI  
404 PARK AVENUE #6A  
ASPEN CO 81611

LINDSAY FORSTER  
404 PARK AVENUE #3  
ASPEN CO 81611

MANUEL CORRIPIO NORIEGA  
PO BOX 2565  
ASPEN CO 81612

REBECCA POLAN  
404 PARK AVENUE #1  
ASPEN CO 81611

ROSA GONGORA  
404 PARK AVENUE #10  
ASPEN CO 81611

SHAUN HEALY  
404 PARK AVENUE #12  
ASPEN CO 81611

SHERIDAN REAL ESTATE, LLC  
ATTN: MARY ELLEN SHERIDAN  
P.O. BOX 7757  
ASPEN CO 81612

SOPRIS CONSULTING GROUP, LLC  
ATTN: PAUL LOTZER  
5400 NORWOOD LANE  
PLYMOUTH MN 55442

STAN CLAUSON ASSOCIATES, INC  
ATTN: STAN CLAUSON  
412 N MILL STREET  
ASPEN CO 81611

TERMINIX  
2907 D 1/2 ROAD  
GRAND JUNCTION CO 81504

WASTE MANAGEMENT-  
CARBONDALE  
PO BOX 78251  
PHOENIX AZ 85062

IRS  
CINCINNATI, OH 45999-0025

UNITED STATES ATTORNEY  
600 U.S. COURTHOUSE  
300 SOUTH FOURTH STREET  
MINNEAPOLIS, MN 55415

IRS DISTRICT COUNSEL  
650 GALTIER PLAZA  
380 JACKSON STREET  
SAINT PAUL, MN 55101

MINNESOTA DEPARTMENT OF  
REVENUE  
BANKRUPTCY SECTION  
P.O. BOX 64447  
SAINT PAUL, MN 55164-00447

INTERNAL REVENUE SERVICE  
STOP 5700  
30 EAST SEVENTH STREET, #1222  
SAINT PAUL, MN 55101-4940

SOURCE GAS  
DISTRIBUTION LLC  
P.O. BOX 13288  
FAYETTEVILLE, AR 72703

HONEYCOMB INTERNET  
SERVICES LL  
77 13TH AVE. NE SUITE 210  
MINNEAPOLIS, MN 55413

Dated: July 26, 2011

/e/ Aong Moua  
Aong Moua